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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,538	02/20/2004	Stephen Cutler	CUTSP0104US	7446

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EXAMINER

HAMILTON, LALITA M

ART UNIT	PAPER NUMBER
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3691

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10/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/783,538	Applicant(s) CUTLER ET AL.	
	Examiner Lalita M. Hamilton	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 45-84, 93-106 and 137-176 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 45-84, 93-106 and 137-176 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the amendment filed on March 16, 2009.

Election/Restrictions

The restriction set forth in the previous Office Action is final. Claims 1-14, 45-84, 93-106, and 137-176 have already been examined.

Claim Rejections - 35 USC § 101

The rejection has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14, 45-84, 93-106, and 135-176 are rejected under 35 U.S.C. 102(e) as being anticipated by Borzenko (6,963,855), as set forth in the previous Office Action.

With regard to claims 100-106, the program claims correspond to method claims 1-7 examined in the previous Office Action. The claims were rejected as follows:

Borzenko discloses a method and corresponding program for displaying market activity comprising tracking activity of a plurality of market makers relating to securities traded on at least one common exchange where the market makers place bids and asks, receiving a dynamically updated data stream containing level 1 and level 2 data

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relating to a plurality of securities traded over the at least one exchange, the level 1 data including at least the last trade price, inside bid and inside ask of each security and the level 2 data containing a bid price, a bid time, a bid volume, a security identifier, and a market maker identifier for each bid, and an ask price, an ask volume, an ask time, a security identifier and a market maker identifier for each ask, and analyzing the data stream for a set of symbols to derive a statistic indicative of activity of an inside market for each of the symbols, the statistic updated to correspond to content of the updated data stream and the statistic selected from at least one of a total number of market makers at the inside market, and a difference between a number of market makers at an inside bid price and a number of market makers at an inside ask price (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45); displaying at least one of the statistics indicative of activity of the inside market in at least one of a table or a chart for each corresponding symbol (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-35; col.7, line 35 to co1.8, line 55; and col.11, lines 30-45); dynamically sorting the at least one of the table or the chart based on a parameter selected by the user to reflect current market activity (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45); filtering the data stream, the filtering including discarding bids having a price lower than the last trade value minus one of a selected threshold percentage of the last trade value or a fixed price away, and discarding asks having a price higher than the last trade value plus one of a selected threshold percentage of the last trade value or a fixed price away (col.2, line 25 to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and

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co1.11, lines 30-45); filtering is conducted for a plurality of selected threshold percentages or fixed prices away, and for each selected threshold percentage or fixed price away a corresponding data set is derived, the statistic being calculated and updated for each symbol for each data set (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45); filtering the data stream for each symbol based on traded volume (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45); filtering the data stream for each symbol based on traded price (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45).

Response to Arguments

Applicant's arguments filed March 16, 2009 have been fully considered but they are not persuasive.

The Applicant argues that the Examiner did not examine claims 100-106. In response, the Examiner erroneously omitted the claim numbers on the Office Action summary and in the rejection; however, the claims were examined. The index of claims clearly states that claims 100-106 were rejected. Claims 100-106 were given a rejection under 35 U.S.C. on p.3 of the previous Office Action. Further, claims 100-106 correspond to method claims 1-7. The rejection stated that "Borzenko discloses a method and corresponding program." Therefore, this action cannot be made non-final.

The Applicant argues that Borzenko does not disclose deriving a statistic comprising a total number of market makers at the inside market, and a difference between a number of market makers at an inside bid price and a number of market

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makers at an inside ask price; deriving a statistic comprising a total volume of shares at the inside market, and at least one of a difference between a number of shares at an inside bid price and a number of shares at an inside ask price, or a percent of inside market shares at the inside bid price as compared to a percent of inside market shares at the inside ask price; deriving a statistic that compares an aspect of market maker inside market activity at a first time period versus a second time period; for a selected market maker and on a symbol by symbol basis, deriving a statistic that compares an aspect of market maker inside market activity at a first time period versus a second time period; for each symbol and market maker pair from a set of symbols and a set of market makers, deriving a statistic comprising counting at least one of a number of times that a bid having an inside bid price is placed, or a number of times that an ask having an inside ask price is placed; or for each symbol and market maker pair from a set of symbols and a set of market makers, deriving a statistic comprising counting at least one of: a number of times the market maker is a first market maker to post an inside bid that is higher than an immediately preceding inside bid for the symbol, or a number of times the market maker is a first market maker to post an inside ask that is lower than an immediately preceding inside ask for the symbol.

In response, Borzenko discloses deriving a statistic comprising a total number of market makers at the inside market, and a difference between a number of market makers at an inside bid price and a number of market makers at an inside ask price (The data representing the ticks comprise a security symbol, tick direction, and a side.

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Based on the movement of the tick and information generated from the market maker activity, a list is generated indicating the difference in the movements of the security or securities--col.2, lines 35-60 and col.12, lines 35-50); deriving a statistic comprising a total volume of shares at the inside market, and at least one of a difference between a number of shares at an inside bid price and a number of shares at an inside ask price, or a percent of inside market shares at the inside bid price as compared to a percent of inside market shares at the inside ask price (The price of the stock will move in relation to the volume of the shares of the stock trading. The data representing the tick is received and a list is generated comprising calculating from the stored tick times a security momentum for the security identified by the symbol representing the tick, said security momentum being a numeric indication of relative security price motion--col.3, lines 25-41); deriving a statistic that compares an aspect of market maker inside market activity at a first time period versus a second time period (The security momentum includes calculating time differences between current time and stored tick times and summing the calculated differences--col.3, lines 35-40); for a selected market maker and on a symbol by symbol basis, deriving a statistic that compares an aspect of market maker inside market activity at a first time period versus a second time period (The security momentum includes calculating time differences between current time and stored tick times and summing the calculated differences--col.3, lines 35-40); for each symbol and market maker pair from a set of symbols and a set of market makers, deriving a statistic comprising counting at least one of a number of times that a bid having an inside bid price is placed, or a number of times that an ask having an inside

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ask price is placed (The price of the stock will move in relation to the volume of the shares of the stock trading. The data representing the tick is received and a list is generated comprising calculating from the stored tick times a security momentum for the security identified by the symbol representing the tick, said security momentum being a numeric indication of relative security price motion--col.3, lines 25-41); and for each symbol and market maker pair from a set of symbols and a set of market makers, deriving a statistic comprising counting at least one of: a number of times the market maker is a first market maker to post an inside bid that is higher than an immediately preceding inside bid for the symbol, or a number of times the market maker is a first market maker to post an inside ask that is lower than an immediately preceding inside ask for the symbol (The price of the stock will move in relation to the volume of the shares of the stock trading. The data representing the tick is received and a list is generated comprising calculating from the stored tick times a security momentum for the security identified by the symbol representing the tick, said security momentum being a numeric indication of relative security price motion--col.3, lines 25-41).

Therefore, the Examiner is interpreting Borzenko as reading onto the invention as claimed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (6:30-2:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kalinowski Alexander can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lalita M Hamilton/
Primary Examiner, Art Unit 3691